

CAUSE NO. 035732

NATIONAL OILWELL VARCO, L.P.	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	
	§	GRIMES COUNTY, TEXAS
JULIO GARZA and ARRAY	§	
TECHNOLOGIES, INC.	§	
	§	
Defendants.	§	12th JUDICIAL DISTRICT

**DEFENDANTS’ PARTIALLY OPPOSED JOINT MOTION TO EXTEND OR MODIFY  
THE DEADLINE TO COMPLY WITH FORENSIC IMAGING ORDER**

Defendants Array Technologies, Inc. (“Array”) and Julio Garza (“Garza”) (collectively, “Defendants”) file this Partially Opposed Joint Motion to Extend or Modify the Deadline to Comply with the Court’s June 3, 2022 Order Granting Plaintiff National Oilwell Varco, L.P.’s (“NOV”) Emergency Motion for Expedited Computer Forensic Imaging & Analysis (the “Forensic Imaging Order”), which is filed subject to Defendants’ Joint Motion to Transfer Venue.

**I. INTRODUCTION**

Defendants’ face a **deadline to produce extensive electronic information –including extensive information from Array’s email and cloud-based system – by tomorrow Wednesday, June 8, 2022** pursuant to the ex parte Forensic Imaging Order. Such unfettered access to Defendants’ devices is improper because it contradicts the Texas Supreme Court’s requirements for forensic discovery.<sup>1</sup>

Accordingly, Defendants filed a Motion to Dissolve the Forensic Imaging Order (the “Motion to Dissolve”), which is currently pending before the Court. At the time of filing of this

<sup>1</sup> See *In re Weekly Homes L.P.*, 295 S.W.3d 309 (Tex. 2009). *In re Weekly Homes L.P.* and its progeny have been briefed extensively in Defendants’ Joint Motion to Dissolve the Forensic Imaging Order. For economy, Defendants will not re-brief the issues, but instead fully incorporate their Joint Motion to Dissolve the Forensic Imaging Order as if set forth fully herein.

motion, despite diligent efforts, given the Court's schedule, Defendants have been unable to obtain a hearing prior to the deadline to comply with the Forensic Imaging Order. Moreover, NOV has requested an opportunity to respond to the Motion to Dissolve on or before Friday, June 10, 2022, but that deadline is **two days after** Defendants are obligated to comply with the Forensic Imaging Order, which is the very subject of the Motion to Dissolve.

For all of the foregoing reasons, Defendants ask the Court to: (i) set a deadline of 12:00 p.m. CST on Friday, June 10, 2022 for NOV to respond to Defendants' Motion to Transfer Venue, Motion to Dissolve the Forensic Imaging Order, and Motion to Dissolve Temporary Restraining Order (collectively, the "Motions") (ii) set a hearing on the Motions sometime between the afternoon of Friday, June 10, 2022 and Tuesday, June 14, 2022; and (iii) modify or extend Defendants' deadline to comply with the Forensic Imaging Order to Wednesday, June 15, 2022 or other date after the hearing on the Motions to Dissolve.

## **II. ARGUMENTS AND AUTHORITIES**

1. An extension of deadlines is "well within [the court's] discretion." *See Williamson Cent. Appraisal Dist. v. Research Park Prop. Trust*, No. 03-06-00746-CV, 2007 WL 4208309, at \*4 (Tex. App.—Austin 2007); TEX. R. CIV. P. 87. Courts have inherent authority to modify their own deadlines and orders, and they must do so when the interest of justice so requires. *Id.* (citing TEX. R. CIV. P. 190.5).

2. Here, the interests of justice require an extension or modification of the deadline to comply with the Forensic Imaging Order because the Court's heavy docket is currently unable to accommodate a hearing on the Motions prior to the deadline for compliance with the Forensic Imaging Order. Since the Forensic Imaging Order was obtained *ex parte*, Defendants lacked an

opportunity to address the deficiencies, which are more fully discussed in the Motions, incorporated herein by reference pursuant to Rule 58. *See* TEX. R. CIV. P. 58.

3. Defendants made multiple good faith efforts from Saturday, June 4, 2022 to Monday, June 6, 2022 to negotiate with NOV concerning an extension of the deadline to comply with the Forensic Imaging Order and avoid judicial intervention concerning that deadline. Among other things, Defendants expressly requested that NOV agree to the one-week extension of the deadline to comply with the Forensic Imaging Order that Defendants now seek in this motion. Ultimately, NOV would not agree to such extension.

4. Additionally, NOV has now requested an opportunity to respond to the Motions on or before June 10, 2022, a date that is **two days after** the deadline to comply with the Forensic Imaging Order that forms the very foundation of the Motion to Dissolve. An extension of Defendants' deadline to comply with the Forensic Imaging Order is the only mechanism available to grant NOV's request to respond to the Motions on Friday, June 10 and create an opportunity to schedule a hearing on the Motions that is convenient for the Court's schedule.

### **REQUEST FOR RELIEF**

For all of the foregoing reasons, Defendants Array Technologies, Inc. and Julio Garza respectfully requests that the Court grant this motion, and: (i) set a deadline of 12:00 p.m. CST on Friday, June 10, 2022 for NOV to respond to the Motions; (ii) set a hearing on the Motions between Friday, June 10, 2022 and Tuesday, June 14, 2022; and (iii) modify or extend Defendants' deadline to comply with the Forensic Imaging Order to Wednesday, June 15, 2022 or a date after the hearing on the Motions, and for all such other and further relief to which Defendants may show themselves to be justly and equitably entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Between June 4, 2022 and June 7, 2022, counsel for Defendants conferred with counsel for NOV numerous times concerning the relief requested in this Motion. As of the filing of this Motion, counsel for NOV has agreed to some but not all of the relief requested herein, as described more fully in the Motion. Counsel for Defendants will promptly notify the Court if agreement is reached between the parties as to all of the relief requested in this Motion.

/s/Rachel Powitzky Steely  
Rachel Powitzky Steely

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served by one of the means permitted by Rule 21a, including through the Clerk's electronic filing service (if applicable), by in person delivery, mail, commercial delivery service, facsimile, or e-mail on June 7, 2022 to:

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